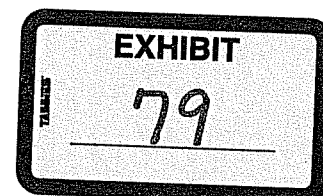


IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES))
FOR THE STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.) 4:05-CV-00329-TCK-SAJ
)
TYSON FOODS, INC., et al,)
)
Defendants.)

THE VIDEOTAPED DEPOSITION OF
PRESTON KELLER, produced as a witness on behalf of
the Plaintiff in the above styled and numbered
cause, taken on the 15th day of October, 2008, in
the City of Fayetteville, County of Washington,
State of Arkansas, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

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918-587-2878



1 A It was -- I'm pretty sure at that point is
2 when we purchased IBP. I was director of
3 environmental agriculture.

4 Q Tell me the title again. Director of
5 environmental what?

09:26AM

6 A Director of environmental agriculture.

7 Q And how long did you remain in that position?

8 A Until I resigned.

9 Q And date of resignation?

10 A January 31st of '05.

09:26AM

11 Q And what was the reason for your resignation?

12 A Just to pursue other opportunities. We bought
13 an RV business at that time.

14 Q When you say we, who are you talking about?

15 A Me and my wife.

09:26AM

16 Q Okay. So you went into the RV business for a
17 while?

18 A Yes.

19 Q And what did you do after that?

20 A We sold out of that, and that's what we're
21 doing currently today, the cattle and sawmill.

09:26AM

22 Q All right. Let's talk then about your duties
23 and responsibilities as director of environmental
24 ag. Let me think. You were in that position for
25 how long; since about '01?

09:27AM

1 presentation, didn't you?

2 A I did.

3 Q All right, but the term is actually fixation
4 if you read a soils manual instructing people about
5 soils or quality and that sort of thing; correct? 10:59AM

6 A We weren't instructing. I don't remember
7 exactly what I was trying to put fixation.

8 Q All right. Do you remember, sir, your
9 instructions, though, in taking soil classes that
10 fixation is not a 100 percent principle but it's 10:59AM
11 lesser than 100 percent as it deals with phosphorus?

12 MR. BOND: Object to the form.

13 A I think early classes at Arkansas State it
14 was. They would fix it, and that was early on, and
15 then later when we went to U of A, it was -- it was 10:59AM
16 -- different parameters within the soil changed the
17 fixation of it.

18 Q So the fixation of phosphorus was not a 100
19 percent phenomenon; would you agree with that?

20 A I would agree with that. 11:00AM

21 Q And your next slide it says present. Do you
22 see that? It says, phosphorus is mobile, causes
23 water quality problems and accumulates in the soil.
24 Did you write that?

25 A Yes. 11:00AM

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1 Q Were you making those statements in your
2 capacity as a director or regional director for
3 environmental agriculture?

4 A Those were speaking points is what those were,
5 and we were training off of those points. 11:00AM

6 Q Okay. So at that time when it talks about the
7 present, did you believe those statements were true
8 in this -- when you made this presentation to the
9 growers or live production?

10 MR. BOND: Object to the form. 11:00AM

11 A It is mobile based off the management
12 practices that are put forth on individual farms,
13 and it only causes water quality problems if it's
14 mismanaged.

15 Q So you're saying only if phosphorus is 11:01AM
16 mismanaged, it causes water quality problems;
17 correct?

18 A That's correct.

19 Q All right, and what would you define as being
20 mismanaged? 11:01AM

21 MR. BOND: Preston, you have take your
22 hand.

23 A Sorry. I'm sorry. Re --

24 Q What do you define as mismanaged when you
25 refer to mismanagement of phosphorus causing water 11:01AM

1 quality problems?

2 A Over application.

3 Q All right. Is there any other types of
4 mismanagement besides over application?

5 A I guess you can stack it outside and not cover 11:01AM
6 it, not burn it. That's the only off the top of my
7 head.

8 Q So when you say phosphorus is mobile and
9 causes water quality problems, how does that occur?

10 A When it's over applied, even commercial 11:01AM
11 fertilizer when it's over applied, it runs off.

12 Q And so when you use the term in your
13 presentation as mobile, is that referring to a
14 chemical aspect of it or physical aspect of it when
15 you use this term in your presentation? 11:02AM

16 MR. BOND: Object to the form.

17 A Probably both.

18 Q Okay. Let's turn to the next page of this
19 Exhibit No. 31 and the slide that continues there
20 under the word present continued and second bullet 11:02AM
21 point says, pressure for regulations in Arkansas.
22 What did you mean by that in this slide; what were
23 you referring to?

24 A I recollect -- I'd say it probably had to do
25 with the lawsuits going on in different watersheds. 11:03AM

1 years old. Do you have any information that would
2 say that isn't true at the time this was written?

3 A No, I do not.

4 Q This has a recommendation to create buffer
5 zones when applying animal waste as fertilizer. Do 01:49PM
6 you know whether or not buffer zones were in fact
7 employed when animal waste was applied on this farm?

8 A No, I do not.

9 Q Look at the second page of this document. It
10 recommends that no litter be applied to the 01:49PM

11 following situations -- or in the following
12 situations. Number one, soils with less than ten
13 inches to bedrock. Do you know whether or not there
14 was ten inches of soil on the Tyson research farm?

15 A I don't know what soil types there are there. 01:50PM

16 Q Let's look at the next page, which is 18689 on
17 the Bates numbers, and it has soil test phosphorus
18 levels and recommended fertilizer applications table
19 at the bottom. Do you see that?

20 A Okay, yes. 01:50PM

21 Q In your opinion, is a soil test phosphorus of
22 717 pounds per acre high?

23 MR. BOND: Object to the form.

24 A Yes.

25 Q Do you know what the agronomic need is for the 01:50PM

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1 forage grasses that are found in the or on the Tyson
2 research farm?

3 MR. BOND: Object to the form.

4 A Off the top of my head, I don't know off the
5 top of my head. Fescue -- I believe this has fescue 01:51PM
6 and white clover, hybrid Bermuda grass.

7 Q And do you know what the agronomic need of
8 phosphorus is for those kinds of grasses?

9 A Depends on whose research you read. It's
10 going to -- for proper growth throughout season, 01:51PM
11 varying weather changes and through the year, I've
12 heard anywhere from 65 up to 300 pounds per acre.
13 So that would depend on what expert's study you were
14 reading.

15 Q And who would you rely on to tell you that 300 01:51PM
16 pounds per acre would be needed?

17 A That would be depending on whose research you
18 were reading.

19 Q Okay. Do you have a specific recollection of
20 somebody who's recommended 300 pounds as an 01:51PM
21 agronomic need?

22 A I don't recollect the research, but I remember
23 reading that. I don't know what year or --

24 Q All right. So 700, even if you used your
25 highest level, would be more than twice that which 01:52PM

1 is needed; would you agree with that?

2 A I would agree with that.

3 Q Would you agree with a statement that
4 increased soil test phosphorus increases the risk of
5 runoff?

01:52PM

6 MR. BOND: Object to the form.

7 A I would agree with that.

8 Q Was it brought to your attention in '99 or
9 2000, as a nutrient management specialist, what the
10 soil test phosphorus levels were on the Tyson
11 research farm?

01:52PM

12 A I don't recall that.

13 Q Do you know whether or not Tyson continued to
14 land apply poultry waste from the research farm on
15 any or all of these fields that are listed on the
16 nutrient management plan?

01:53PM

17 A I don't recall that.

18 Q Looking at the next page of this nutrient
19 management plan, the very first sentence at the top
20 it says, several of the fields on this farm have
21 high -- have soils with a severe runoff potential or
22 high leaching potential. What does that mean by
23 leaching potential; do you know?

01:53PM

24 A The movement of water through soils.

25 Q All right. Is that something you knew when

01:53PM